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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/837,739	04/06/2001	Jim Reich	540606-2001	9745
20999	7590	01/27/2004	EXAMINER	
FROMMER LAWRENCE & HAUG 745 FIFTH AVENUE- 10TH FL. NEW YORK, NY 10151			BOYD, JENNIFER A	
			ART UNIT	PAPER NUMBER
			1771	
DATE MAILED: 01/27/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/837,739

Applicant(s)

REICH, JIM

Examiner

Jennifer A Boyd

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 15 - 17, 19 - 21 and 23 - 24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15 - 17, 19 - 21 and 23 - 24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Response to Amendment***

1. The Applicant's Amendments and Accompanying Remarks, filed November 3, 2003, have been entered and have been carefully considered. Claim 15 is amended, claims 18 and 22 are cancelled, claims 23 and 24 are added and claims 15 – 17, 19 – 21 and 23 – 24 are pending. In view of Applicant's Amendments, the Examiner withdraws the 35 U.S.C. 112, 2<sup>nd</sup> paragraph rejection of claims 1 - 11 as set forth in paragraphs 4 and 5 of the previous Office Action dated June 3, 2003. In view of Applicant's Amendments, the Examiner withdraws all previous rejection set forth in paragraphs 6 – 8 of the previous Office Action dated June 3, 2003. However, after an updated search, additional prior art was discovered that causes the invention as currently claimed unpatentable for reasons herein below.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 102***

3. Claims 15 – 17, 19 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Gurian (US 5,856,005).

Gurian is directed to a permanently anti-microbial and flame-retardant yarn and fabric made therefrom (Title).

As to claims 15 and 23, Gurian teaches a yarn with base filaments formed of a plurality of the permanently flame-retardant filaments and a pair of effect filaments – one of the plurality

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of permanently flame-retardant filaments and one of the plurality of permanently anti-microbial filaments (column 3, lines 23 – 45). Gurian teaches that the permanently flame-retardant filaments are made of polyester and available under the trade name TREVIRA (column 4, lines 30 – 38). Gurian teaches that the permanently anti-microbial filaments are formed of cellulose acetate permanently impregnated with up to 2% by weight of chlorinated phenoxy compound available under the trade name MICROBAN B as an anti-microbial agent (column 4, lines 15 – 30). It should be noted that the preferred anti-microbial filaments are available under the trade name MICROSAFE acetate (column 4, lines 20 – 25). Gurian teaches that the yarn can be incorporated into a knitted or woven fabric (column 4, lines 53 – 60). Gurian teaches that the fabric comprises at least 5% by weight of the anti-microbial filaments (column 4, lines 60 – 65). It should be noted that the phrase “at least 5% by weight” encompasses the Applicant’s range of “at least 25% by weight”.

As to claim 16, Gurian teaches that MICROBAN can be used as the anti-microbial agent (column 4, lines 15 – 30), which is known in the art to be a form of triclosan.

As to claim 17, Gurian teaches the use of Hoechst-Celanese T692 SD (semi-dull) polyester (column 5, lines 40 – 45).

As to claim 19, Gurian teaches that the permanently flame-retardant filaments and permanently anti-microbial filaments air jet textured to create yarns (column 4, lines 45 – 50).

### ***Claim Rejections - 35 USC § 103***

4. Claims 20 – 21 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gurian (US 5,856,005) in view of Robinson (US 2002/0069904).

Gurian teaches the claimed invention above except fails to disclose that the fabric can be is an odor-reducing fabric, or specifically an odor-reducing hunting garment.

Robinson is directed to an odor-reducing enclosure to prevent game animals from detecting human and human related odors (Title and Abstract). Robinson teaches an enclosure comprising a plurality of layers of fabric. At least one of the fabric layers may include an odor mitigating substance (page 3, section [0033]). Robinson teaches that exemplary fabrics potentially suitable for use in the enclosure is described in US Patent 5,856,005 (page 4, section [0054]).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the fabric of Gurian into the odor-reducing enclosure of Robinson motivated by the desire to use a suitable odor-reducing material specifically cited by Robinson to create the enclosure.

It should be noted that Robinson notes that items of attire are not expressly considered to be within the scope of the present invention (page 2, section [0027]). The Examiner has not given any patentable weight to "an odor-reducing hunting garment". Furthermore, it has been held that a recitation with respect to the manner in which a claimed article is intended to be employed does not differentiate the claimed article from a prior art article satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Gurian in view of Robinson discloses a woven or knitted fabric comprising polyester and acetate comprising MICROBAN, wherein the acetate fiber is present at least 25% by weight of the fabric, and the polyester and acetate fibers are entwined by means of air entanglement. It should be noted that there is nothing

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on record that demonstrates that the odor-reducing material of Gurian in view of Robinson cannot be used to create an odor-reducing hunting garment.

5. Claims 15 – 16, 19 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clarke (US 6,258,455).

Clarke is directed to an antimicrobial ultra-microfiber cloth (Title).

As to claims 15 and 23, Clarke teaches a material produced by combining ultra-microfiber yarns with yarns of antimicrobial fiber such as an acetate fiber sold under the name MICROSAFE (column 3, lines 1 – 15). Clarke teaches that the yarn may additionally comprise polyester to increase the strength of the yarn (column 3, lines 15 – 20). Clarke teaches that the material can woven or knitted (column 1, lines 5 – 10).

As to claim 16, Clarke teaches that MICROSAFE fibers can be used as the anti-microbial fiber (column 4, lines 15 – 30), which is known in the art to contain triclosan.

As to claim 19, Clarke teaches that the antimicrobial fibers and ultra-microfibers can be intermixed by air jet texturing (column 3, lines 60 – 67).

As to claim 15, Clarke discloses the claimed invention except for that the antimicrobial acetate fiber is present in the amount of at least 25% by weight of the fabric. It should be noted that the amount of antimicrobial acetate fiber in the fabric is a result effective variable. Clarke teaches that it is preferable that approximately 18% of the total material comprises acetate antimicrobial fiber (column 4, lines 8 – 12). However, Clarke notes that higher and lower concentrations of antimicrobial fiber may be acceptable in particular circumstances (column 4,

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lines 16 – 19). For example, as the level of antimicrobial acetate increases, the fabric becomes more effective in destroying bacteria. It would have been obvious to one having ordinary skill in the art at the time the invention was made to create a material with antimicrobial acetate fiber present in the amount of 25% of the total weight of the fabric since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). In the present invention, one would have been motivated to optimize the percentage of antimicrobial acetate based on the desired application of the material.

6. Claims 20 – 21 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clarke (US 6,258,455) in view of Newman (US 6,000,057).

Clarke teaches the claimed invention above except fails to teach that the fabric is an odor-reducing fabric, or specifically an odor-reducing hunting garment.

Newman is directed to odor preventing hunting apparel (Title). Newman teaches a fabric for use in the construction of hunting clothing, preferably undergarments such as T-shirts, briefs, socks, thermal underwear, gloves, hats, scarves etc. having directed and intimate contact with the skin (column 1, lines 50 – 55). Newman teaches that the clothing is effective for preventing the growth and reproducing of odor-producing bacteria on the body, and thereby reducing body odor, by simply wearing the antimicrobial clothing (column 2, lines 1 – 5). Newman teaches that antimicrobial fabric such as those available from Microban Products Company under the MICROBAN mark, such as MICROSAFE fabric is suitable for the inner layer of fabric in the piece of clothing (column 1, lines 55 – 60).

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the material of Clarke as the inner layer of fabric in the odor preventing hunting apparel of Newman motivated by the desire to use an anti-microbial fabric with MICROSAFE fibers as desired by Newman which is high strength due to the integration of polyester fibers to create a durable garment.

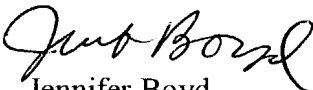
***Response to Arguments***

7. Applicant's arguments with respect to claims 1 – 11 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer A Boyd whose telephone number is 571-272-1473. The examiner can normally be reached on Monday thru Friday (8:30am - 6:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-0994.

  
Jennifer Boyd  
January 16, 2004

  
TERREL MORRIS  
SUPERVISORY PATENT EXAMINER  
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